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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**GOOGLE LLC'S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF
GOOGLE'S OPPOSITION TO
PLAINTIFFS' MOTION TO STRIKE
NON-RETAINED EXPERT
DECLARATIONS FOR WHOM GOOGLE
PROVIDED NO EXPERT REPORT**

Judge: Hon. Yvonne Gonzalez Rogers

Case No. 4:20-cv-03664-YGR-SVK

GOOGLE LLC'S ADMINISTRATIVE MOTION TO SEAL PORTIONS OF GOOGLE'S OPPOSITION TO
PLAINTIFFS' MOTION TO STRIKE NON-RETAINED EXPERT DECLARATIONS

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully seeks to seal certain portions of Google’s Opposition to Plaintiffs’ Motion to Strike Non-Retained Expert Declarations for Whom Google Provided No Expert Report (“Google’s Opposition”), which contains non-public, highly sensitive and confidential business information that could affect Google’s competitive standing and may expose Google to increased security risks if publicly disclosed, including various types of Google’s internal projects, data sources, and their proprietary functionalities. This information is highly confidential and should be protected.

This Administrative Motion pertains to the following information contained in Google’s Opposition:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Google’s Opposition to Plaintiffs’ Motion to Strike Non-Retained Expert Declarations for Whom Google Provided No Expert Report	Highlighted Portions at: 12:12-14, 13:26-27	Google
Exhibit 3 Schapiro Declaration (Excerpts of 6/16/2021 G. Berntson Deposition)	Highlighted Portions at: 4:12, 4:18, 4:21, 121:9-11, 121:13-21, 122:10-24, 123:1-4, 123:10-11, 123:13-14, 123:16, 123:18, 123:20, 124:1, 124:3, 124:9-12, 124:23, 125:6-7, 125:10, 125:18, 390:1-2, 390:15, 390:20 395:24, 396:14	Google

II. LEGAL STANDARD

A party seeking to seal material must “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

The common law right of public access to judicial records in a civil case is not a constitutional right and it is “not absolute.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978) (noting that the “right to inspect and copy judicial records is not absolute” and that

1 “courts have refused to permit their files to serve as reservoirs of . . . sources of business information
 2 that might harm a litigant’s competitive standing”). Sealing is appropriate when the information at
 3 issue constitutes “competitively sensitive information,” such as “confidential research,
 4 development, or commercial information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*,
 5 2014 WL 4965995, at *4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d
 6 1206, 1211 (9th Cir. 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of
 7 materials for many types of information, including, but not limited to, trade secrets or other
 8 confidential research, development, or commercial information”).

9 **III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED**

10 Courts have repeatedly found it appropriate to seal documents that contain “business
 11 information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*,
 12 435 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that
 13 “contain[] confidential information about the operation of [the party’s] products and that public
 14 disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg of*
 15 *Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that
 16 could harm a litigant’s competitive standing may be sealed even under the “compelling reasons”
 17 standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at
 18 *2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’
 19 standard where that information could be used to the company’s competitive disadvantage”)
 20 (citation omitted). Courts in this district have also determined that motions to seal may be granted
 21 as to potential trade secrets. *See, e.g. United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015
 22 WL 295584, at *3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party]
 23 ha[s] not shown that the substance of the information . . . amounts to a trade secret”).

24 Here, Google’s Opposition comprises confidential and proprietary information regarding
 25 highly sensitive features of Google’s internal systems and operations that Google does not share
 26 publicly. Specifically, this information provides information regarding Google’s internal projects,
 27 data sources, and their proprietary functionalities. Such information reveals Google’s internal
 28

1 strategies, system designs, and business practices for operating and maintaining many of its
2 important services while complying with its legal and privacy obligations.

3 Public disclosure of the above-listed information would harm Google’s competitive standing
4 it has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
5 Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a
6 proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-
7 cv-02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal
8 certain sensitive business information related to Google’s processes and policies to ensure the
9 integrity and security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*,
10 No. 3:16-cv-02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales
11 data because “disclosure would harm their competitive standing by giving competitors insight they
12 do not have”); *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8,
13 2013) (granting motion to seal as to “internal research results that disclose statistical coding that is
14 not publically available”).

15 Moreover, if publicly disclosed, malicious actors may use such information to seek to
16 compromise Google’s data logging infrastructure. Google would be placed at an increased risk of
17 cyber security threats. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal.
18 Sept. 25, 2013) (sealing “material concern[ing] how users’ interactions with the Gmail system
19 affects how messages are transmitted” because if made public, it “could lead to a breach in the
20 security of the Gmail system”). The security threat is an additional reason for this Court to seal the
21 identified information.

22 The information Google seeks to redact is the minimal amount of information needed to
23 protect its internal systems and operations from being exposed to not only its competitors but also
24 to nefarious actors who may improperly seek access to and disrupt these systems and operations.
25 The “good cause” rather than the “compelling reasons” standard should apply but under either
26 standard, Google’s sealing request is warranted.

27 **IV. CONCLUSION**

1 For the foregoing reasons, the Court should seal the identified portions of Google's
2 Opposition.

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4 DATED: September 14, 2022

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